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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation	)	MM Docket No. 92-266
Leased Commercial Access Inside Wiring	)	CS Docket No. 96-60

To: The Commission

Joint Petition for Reconsideration

InterMedia Partners ("InterMedia") and Armstrong Utilities, Inc. dba Armstrong Cable Services ("Armstrong"), through counsel, and pursuant to Section 1.106 of the Commission's Rules, hereby submit a Joint Petition for Reconsideration regarding the above-captioned proceeding.[1/] InterMedia operates cable systems primarily in the Southeastern region of the country, including Tennessee, Georgia, North Carolina and South Carolina. InterMedia serves approximately 750,000 subscribers. Armstrong is a closely-held, family-owned business that has operated cable television systems since 1960. Currently, Armstrong serves approximately 192,000 subscribers in 209 cable television

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[1/] Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266 and MM Docket No. CS 96-60, FCC 96-122, Released March 29, 1996 ("Order" and "FNPRM").

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franchise areas located in Pennsylvania, Ohio, West Virginia, Maryland, and Kentucky. Armstrong's cable subscribers receive between 36 and 42 channels of programming delivered via state-of-the-art technology which, for the most part, Armstrong has internally financed, constructed, and continually upgraded over a period of thirty years.

The modifications of the FCC's leased access rules set forth in the Order will directly affect the financial and business operations of InterMedia and Armstrong. For these reasons, InterMedia and Armstrong respectfully request that the FCC reconsider the following aspects of its Order: (1) the Commission should not impose a mandatory time period of seven business days to respond to requests for information from leased access programmers, and (2) cable operators should be allowed to ask fundamental questions to better respond to the programmer's requests.

I. A Seven Business Day Response Time Would Cause Undue Hardship to Cable Operators.

In the Order, the Commission modifies Section 76.970(e) of its rules to require an operator to respond to a prospective leased access programmer within seven business days of a request and provide the following information: (a) a complete schedule of the operator's full and part time leased access rates; (b) how much of its set-aside capacity is available; (c) rates associated with technical and studio costs; and (d) if specifically requested, a sample leased access contract. Order at ¶ 40.

In setting this timetable, the FCC concludes: "operators should have this information readily available and therefore providing it to prospective programmers within seven business days will impose no hardship on operators." Id. This is simply not the case. The fact is, at present, cable operators do not get many leased access inquiries, and operators therefore have not prepared this kind of information in advance.[2/] For a small operator in particular, collecting and preparing this kind of information is time consuming, and demands a considerable amount of the cable operator's resources.

Furthermore, even if some of the information has been prepared for another potential programmer, that information, in all likelihood, might not be applicable from one programmer to another.

Seven business days is simply not enough time to respond to these types of requests. In many instances, a request will demand much more information than the items listed by the FCC. Supplying only the information listed by the Commission in seven days and other information later is wasteful. The existing system, which permits operators and programmers to work together to determine what information is needed, without being subject to arbitrary deadlines, is a reasonable approach that should be retained. In the alternative, if the FCC determines that a response deadline is necessary, the FCC should give cable

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[2/] Many inquiries do not, on their face, make it clear what type of service or programming it plans to cablecast, the time period sought, or even on what systems it seeks access.

operators at least thirty days in which to provide the required information. Further, it is unclear from the Order whether a cable operator that is only able to provide some, but not all, of the programmer's requested information would still be subject to forfeitures. See, Order at ¶ 40. Seven business days is simply not sufficient time.

Furthermore, it is also common practice for a prospective leased access programmer to call the cable operator's advertising department to request leased access information. Because the advertising department is not involved in preparing any of this information, the inquiry must be routed to the correct department, and only then, can the cable company begin preparing the information. Moreover, the Order states that a request can be made by any reasonable means, including by mail. Id. It appears from the Order that the time clock may start running when the request is mailed. Consequently, the seven business day response time would create unreasonable burdens on InterMedia and Armstrong's time and resources. Even if InterMedia and Armstrong were making a good faith attempt to gather the requested information, it is not possible to compile and prepare this amount of information within seven business days. InterMedia and Armstrong submit that if the FCC imposes a response deadline, a thirty-day requirement would be more reasonable.

II. When Information is Requested by Leased Access Programmers, Cable Operators Should Be Allowed to Ask For Fundamental Information.

Related to the first issue, the FCC's Order also states that operators may not ask the prospective programmers to provide any information before supplying them with the required information. Order at ¶ 40. This requirement is counterproductive. With some basic information, the cable operator would be better able to assist the programmer with its inquiries. For instance, if the cable operator knew on which tier the programmer planned to operate, or which system it planned to request a leased access channel from, it could provide that specific information. Otherwise, the cable operator might be compiling and preparing useless, unnecessary information.

Negotiations between the operators and programmers would be furthered if information were exchanged between the parties. For instance, Section 612(j)(1) of the Communications Act of 1934, as amended,[3/] requires cable operators, in order to limit children's access to indecent programming, if such programming is carried, to place all such programs on a single channel and requires cable operators to block such channels unless otherwise requested by a subscriber. 47 U.S.C. 532(j)(1). Further, the statutory provision requires programmers to inform cable

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[3/] This statutory provision has been stayed pending review by the Supreme Court. Alliance for Community Media v. F.C.C., 56 F.3d 105 (D.C. Cir. 1995), cert. granted sub nom. Denver Area Educational Telecommunications Consortium, Inc. v. F.C.C., 116 S. Ct. 471 (1995).

operators if the proposed programming would be considered indecent. 47 U.S.C. § 532(j)(1)(C). In order to maintain consistent regulations, programmers should be required to inform the operator of this type of information when requesting information. Moreover, cable operators should have this information upfront, in order to accommodate such a request.

The FCC notes that these requirements stem from programmers' complaints alleging noncompliance with requests. Order at ¶ 40. Though InterMedia and Armstrong recognize this may be an issue, the FCC's solution, to forbid cable operators from asking any questions of the requesting parties and imposing a seven business day response requirement, do not appear to resolve that problem. It may be more productive for the FCC to require the parties to act in good faith. The Commission has the power to sanction those who act in bad faith.

Conclusion

For the reasons set forth herein, InterMedia and Armstrong respectfully request that the FCC reconsider its decision in its Order, with respect to these matters.

Respectfully submitted,

INTERMEDIA PARTNERS AND

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dba ARMSTRONG CABLE SERVICES

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May 15, 1995

Certificate of Service

I, Gwen L. Webster, a legal secretary for the law firm of Ross & Hardies, hereby certify that a copy of the foregoing **"Joint Petition for Reconsideration"** was served via hand delivery, on this **15th** day of **May, 1996** to:

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